THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 640 of 2003

Oral order:

Impugning the proceedings dated 27-11-2001, issued by the 2nd respondent-Superintending Engineer, Assessments Circle, APEDCL, the petitioner filed the present writ petition.

Having regard to the amendment made to the Indian Electricity Act, 1910, by insertion of Section 49-C therein by the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, providing for constitution of Special Tribunals for the speedy trial of the offences under the Act, the learned counsel for the petitioner would submit that the impugned order dated 27-11-2001, passed by the 2nd respondent, is illegal and without jurisdiction, inasmuch as the Special Tribunal alone is competent to determine the compensation payable by a consumer to the APTRANSCO for the power pilfered.

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the APTRANSCO.

Section 49-C, which was inserted in the Indian Electricity Act, 1910 by reason of Indian Electricity (Andhra Pradesh Amendment) Act, 2000, came into effect on and from 31-7-2000. The said Section is in the following terms:

49-C. Constitution of Special Tribunals:- (1) For the purpose of providing for speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the official Gazette, specify for a District or Districts, a court of District and sessions Judge to be Special Tribunal to try the offences under this Act and determine the compensation to be awarded to the Electricity utility where the compensation to be awarded is upto the value of rupees five lakhs;

Provided that if, in the opinion of the Special Tribunal any case brought before it is a fit case to be tried by the Special Court, it may, for reasons to be recorded by

it, transfer the case to the Special Court for its decision in the matter.

(2) An appeal shall lie from any judgement or order, not being interlocutory order, of the Special Tribunal, to the Special Court. Every appeal under this sub-section shall be preferred within a period of sixty days from the date of judgement or order of the Special Tribunal:

Provided that the Special Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

(3) Every finding of the Special Tribunal with regard to any alleged act of theft of energy shall be conclusive proof of the fact of theft of energy and shall be binding on the person or consumer concerned.

(4) It shall be lawful for the Special Tribunal to pass an order in any case decided by it awarding compensation in terms of money for theft of energy which shall not be less than an amount equivalent to twelve months assessed quantity of the energy committed theft of at three times of tariff rate applicable to the consumer or person as per guidelines prescribed by State Government from time to time and the amount of compensation so awarded shall be recovered as if it were a decree of a civil court.

Provided that the Special Tribunal, before passing an order under this sub-section, give to the consumer or person an opportunity of making his representation or of adducing evidence, if any, in this regard and consider every such representation and evidence.

(5) Any case pending before any Court or other Authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, as would have been within the jurisdiction of a Special Tribunal shall stand transferred to the Special Tribunal, having jurisdiction as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

(6) Every case brought before the Special Tribunal shall be disposed of finally by the Special Tribunal, as far as possible, within a period of six months from the date of its having been brought before it.

(7) Notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every offence punishable under this Act, shall be tried in summary way by the Special Tribunal and the provisions of Sections 263 to 265 of the said Code shall as far as may be apply to such trial.

Sub-section (1) of Section 49-C provides for constitution of Special Tribunals, under sub-section (2) an appeal lies to the Special Court against the judgement or order of the Special Tribunal not being an interlocutory one. Under sub-section (3) every finding of the Special Tribunal with respect to the alleged act of theft of energy is made conclusive proof of the fact of theft of energy, and is binding on the person or consumer concerned. Sub-section (4) ordains that it is only the Special Tribunal that can pass an order awarding compensation in terms of money for theft of energy. Sub-section (5)

provides that any case pending before any Court or other Authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, shall stand transferred to the Special Tribunal, having jurisdiction. Sub-section (6) limits the time within which the case brought before the Special Tribunal should be disposed of, and sub-section (7) which is a non-obstante clause provides that notwithstanding anything contained in Section 260 or Section 262 of the Code of Criminal Procedure, 1973, offence under the Act shall be tried by the Special Tribunal in a summary way and the provisions of Sections 263 to 265 of the Code as far as practicable shall apply to the trial.

By the time the order impugned in this writ petition came to be passed on 27-11-2001, the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, which came into effect on and from 31-7-2000, was already in operation, and therefore, the impugned order dated 27-11-2001 passed by the 2nd respondent is wholly illegal and without jurisdiction, for as on the date of passing of the impugned order, the Special Tribunal alone constituted under sub-section (1) of Section 49-C had the power and jurisdiction to pass an order awarding compensation in terms of money for theft of energy.

For the foregoing reasons, the impugned order cannot be sustained, and it is accordingly set aside. The writ petition is allowed. The respondents are directed to transfer the case of the petitioner to the Special Tribunal having jurisdiction, within a period of two weeks from the date of receipt of a copy of this order. No costs.

N.V. RAMANA, J.

Date: 9th April, 2003.
KSR